

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5957 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

J. L. PATHAK

Versus

STATE OF GUJARAT

Appearance:

MR SUNIL K SHAH for Petitioner
MR DP JOSHI for M/S PATEL ADVOCATES for
Respondent No. 1
M/S. MG DOSHIT for Respondent No. 2
MR HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 29/09/2000

ORAL JUDGEMENT

#. Petitioner has filed this petition for revising his
salary and allowances as Medical Officer, Class II.

#. Short facts of the case required to decide present

petition are as under.

#. The petitioner joined the service as Medical Officer, Class III, Allopathy in Public Health Branch on or about 11th February, 1971. By an order dated 7th April, 1975, the petitioner was posted against the post of Medical Officer, Class II at Primary Health Unit, Vejjpur. The services of the petitioner were wrongly terminated after some time, as a result of which, he was constrained to approach this Court. Even respondent no. 3 was not implementing the directions of respondent no. 2 herein and therefore, the Director was constrained to write D.O. letter on 20th January, 1976, wherein, it is stated as under.

"The services of Dr. J.L. Pathak, Medical Officer, Cl. III Vejjpur, District Baroda have been terminated by the District Panchayat, Baroda from 5.12.1975.

Dr. J.L. Pathak has appealed to the Government mentioning that as he was selected by the State Government before Panchayat Raj, but for his first appointment, Government had asked the District panchayat, Baroda to post him in Class III post.

Now that the department has allocated number of Cl. II, gazetted Medical Officers to District Panchayat, Baroda, the Dist. Panchayat authorities have terminated his services.

The whole case was discussed by the Joint Director (FP & MCH) and Director of Health Services with the Dy. Secretary (Health) and the decision was taken in the Joint meeting was that Dr. J.L. Pathak be continued in the same post and, if need be, the total number of Class II Medical Officers to be allocated to Baroda should be less by one in order to continue the services of Dr. J.L. Pathak."

Thus, it is very clear that the decision of the department was to the effect that the petitioner should be posted on Class II post. It appears that the District Development Officer made a statement before this Court to reinstate the petitioner in service with continuity of service, but without backwages and accordingly the period from 9.12.75 to 21.7.77 was treated as leave without pay (Special Civil Application No. 1240/77 and L.P.A.

273/77, and para 4 of the present Special Civil Application).

#. The petitioner was given posting vide order dated 20th July, 1977, which was against the post of Family Planning Medical Officer, Class II and thus, he was again reinstated by the respondent. The petitioner again approached this Court and ultimately respondent no. 3 - District Development Officer agreed to continue the petitioner against the post of Family Planning Medical Officer, Class II, Sathod as per his order dated 4th October, 1977. Copy of the said order made by the District Development Officer is placed on the record at Annexure A/1 (vide para 5 of the petition).

#. Learned counsel, appearing for the petitioner submitted that the petitioner was thus continuously rendering his services against the post of Medical Officer, Class II. However, till date of superannuation, with evil motive, he was treated in Class III. By a notice dated 5th February, 1986, the respondents were called upon to pay to the petitioner, the difference between the salary payable to an officer who had rendered services on the post of Medical Officer, Class II and the amount of salary paid to the petitioner merely as a Medical Officer, Class III for the period from 22.7.77 to 31.12.81 (Vide Annexure : C). It transpires that vide letter, Annexure : D dated 14.3.86 the Director of Health and Medical Services & Medical Education called upon the District Development Officer to pay the benefits as per the notice given by him. Reading the notice and this letter, it is clear that the District Development Officer was called upon to pay the difference as claimed by the petitioner. Merely because the designation of the petitioner was indicated as Class III, the benefits have not been extended to the petitioner illegally.

#. It was also pointed out that in view of the circular dated 3rd September, 1981, the petitioner was entitled for some period, the allowances for loss of private practice. Therefore, in accordance with the rules, if he is entitled to the same benefit, should be extended.

#. The petitioner amended the petition in view of the permission granted by the Court on 3.9.87. The petitioner has specifically stated that after filing the petition, the petitioner received a copy of the letter dated 18.8.86 written by the District Medical Officer of Health, District Panchayat, Baroda to the Medical Officer, PHC, Savli (enclosed with the petition vide Annexure E/1), wherein it was directed that the

petitioner should be paid the dues on priority basis. In view of the aforesaid letter, the petitioner also addressed a letter (vide Annexure E/2). However, the benefits are not extended to him.

#. The petitioner has annexed relevant documents in the petition. Till today, no reply is filed on behalf of the State of Gujarat, Director of Health & Medical Services & Medical Education and the District Development Officer. Mr. H.S. Munshaw, learned counsel appearing for the respondent No. 3 stated that he may be granted some time to file reply. After perusal of the record, Mr. Munshaw could not submit before the Court that the petitioner has not made out a case. In view of these specific averments made in the petition, which are not controverted and there is specific direction given by the Director that the petitioner should be given all benefits. After the filing of the petition, even on 20th November, 1987 and 30th August, 1988, the District Panchayat addressed letters to the Director in this behalf, inter alia pointing out that the petitioner was appointed in Class III, however, in view of the vacancy from time to time, he was asked to work in Class II post and for more than 5 years, he has worked as such and therefore, he has raised the demand. It was specifically mentioned that though there is no order of promotion, he has worked in Class II post and whatever amount required to be paid is to be paid by the authority. Thus, I fail to see any reason why the petitioner should not be extended the benefits which he is entitled to and this petition requires to be allowed.

#. The respondents are directed to make payment within a period of 2 months from today with interest at the rate of 15%. However, if the amount is not paid within a period of two months, the amount shall be paid at the rate of 18% per annum and the difference of the amount shall be recovered from the erring officer by the respondents. Rule is made absolute with no order as to costs.

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